

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

THOMAS J. FAGAN

Plaintiff,

v.

MR. SANDLESS FRANCHISE, LLC

Defendant.

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Civil Action No. 08-3297 (KSH)

**ORDER ON INFORMAL
APPLICATION**

This matter having come before the Court by way of letters dated October 2, 2008 and October 7, 2008, regarding the plaintiff's request to conduct additional discovery and to convene a hearing concerning statements he alleges have been made concerning a decision on the motion to dismiss;

and the Court having considered the submissions and the record of proceedings;

and the Court having permitted limited discovery related to subject matter jurisdiction;

and the Court having permitted no other discovery to proceed;

and there being no reason for the Court to allow for the deposition of Mr. Prasalowicz to be reopened as dissatisfaction with his responses, or a belief he made false statements as challenges to his credibility can be presented through evidence from other sources, such as an affidavit of plaintiff or Mr. Kolb;

and the Court having already considered the request for permission to conduct additional discovery;

and the Court having been presented with no new facts that warrant reconsideration of its decision to preclude additional discovery for the purpose of addressing the motion to dismiss;

and nothing herein precluding additional discovery if the motion to dismiss is denied;

and nothing herein precluding the plaintiff from interviewing witnesses who are not represented by counsel;

and nothing herein precluding the plaintiff from interviewing witnesses who are represented by counsel so long as he contacts the witness' counsel to arrange an interview;

and there being no reason to convene a hearing concerning any alleged ex-parte contact as no such contact has occurred and the Court has made no representations concerning the outcome of any motion;

IT IS ON THIS 10th day of October, 2008

ORDERED that the request to reopen the deposition of Mr. Prasalowicz is denied;

IT IS FURTHER ORDERED that the request to convene a hearing concerning the truthfulness of Mr. Prasalowicz's statements is denied without prejudice to the presentation of evidence to show that he made knowingly false statements if such a deposition is used in supporting the motion to dismiss;

IT IS FURTHER ORDERED that the request to depose Messrs. Kolb and James are denied without prejudice to convening their depositions if the motion to dismiss is denied;

IT IS FURTHER ORDERED that nothing herein precludes the plaintiff from interviewing witnesses. If a witness is represented by counsel, then he must connect the witness' counsel to arrange for an interview; and

IT IS FURTHER ORDERED that the request to convene a hearing to determine whether or not individuals associated with the defendants have made statements concerning the ruling on the motion to dismiss is denied.

s/Patty Shwartz

UNITED STATES MAGISTRATE JUDGE